

**Declaration of Joe Goldenson, MD**

1. I am a medical physician with 33 years of experience in correctional health care. For 28 years, I worked for Jail Health Services of the San Francisco Department of Public Health. For 22 of those years, I served as the Director and Medical Director. In that role, I provided direct clinical services, managed public health activities in the San Francisco County jail, and administered the correctional health enterprise, including its budget, human resources services, and medical, mental health, dental, and pharmacy services.

2. I served as a member of the Board of Directors of the National Commission on Correctional Health Care for eight years and was past President of the California chapter of the American Correctional Health Services Association. In 2014, I received the Armond Start Award of Excellence from the Society of Correctional Physicians, which recognizes its recipient as a representative of the highest ideals in correctional medicine.

3. For 35 years, I held an academic appointment as an Assistant Clinical Professor at the University of California, San Francisco.

4. I have worked extensively as a correctional health medical expert and court monitor. I have served as a medical expert for the United States District Court for the Northern District of California for 25 years. I am currently retained by that Court as a medical expert in *Plata v. Newsom*, Case No. 3:01-cv-01351 (N.D. Cal.), to evaluate medical care provided to inmate patients in the California Department of Correctional Rehabilitation. I have also served as a medical expert/monitor at Cook County Jail in Chicago and Los Angeles County Jail, at other jails in Washington, Texas, and Florida, and at prisons in Illinois, Ohio, and Wisconsin.

**The nature of COVID-19**

5. The SARS-nCoV-2 virus, and the human infection it causes, COVID-19 disease, is a global pandemic and has been termed a global health emergency by the WHO. Cases first

began appearing sometime between December 1, 2019 and December 31, 2019 in Hubei Province, China. Most of these cases were associated with a wet seafood market in Wuhan City.

6. On January 7, 2020, the virus was isolated. The virus was analyzed and discovered to be a coronavirus closely related to the SARS coronavirus which caused the 2002-2003 SARS epidemic.

7. COVID-19 is a serious disease. The overall case fatality rate has been estimated to range from 0.3 to 3.5%, which is 5-35 times the fatality associated with influenza infection. COVID-19 is characterized by a flu-like illness. While more than 80% of cases are self-limited and generally mild, overall some 20% of cases will have more severe disease requiring medical intervention and support.

8. The case fatality rate varies significantly depending on the presence of certain demographic and health factors. The case fatality rate varies significantly with advancing age, rising after age 50, and above 5% (1 in 20 cases) for those with pre-existing medical conditions including cardio-vascular disease, respiratory disease, diabetes, and immune compromise.

9. People with moderate to severe asthma may be at higher risk of getting very sick from COVID-19. COVID-19 can affect your respiratory tract (nose, throat, lungs), cause an asthma attack, and possibly lead to pneumonia and acute respiratory disease.

10. Among patients who have more serious disease, some 30% will progress to Acute Respiratory Distress Syndrome (ARDS) which has a 30% mortality rate overall, higher in those with other health conditions. Some 13% of these patients will require mechanical ventilation, which is why intensive care beds and ventilators have been in insufficient supply in Italy, Iran, and in parts of China.

11. COVID-19 is widespread. Since it first appeared in Hubei Province, China, in late 2019, outbreaks have subsequently occurred in more than 160 countries and all populated continents, heavily affected countries include Italy, Spain, Iran, South Korea, and the US. The U.S. is now the world's most affected country. As of April 11, 2020, there have been 1,524,161 confirmed human cases globally and 92,941 known deaths. The pandemic has been termed a global health emergency by the WHO. It is not contained and cases are growing exponentially.

12. In the United States alone, the CDC reports 459,165 cases and 16,570 deaths as of April 10, 2020. The Ohio Department of Health reports 5,836 cases and 227 dead as of April 10. All these numbers are likely underestimates because of limited availability of testing.

13. SARS-nCoV-2 is now known to be fully adapted to human-to-human spread. This is almost certainly a new human infection, which also means that there is no preexisting or "herd" immunity, allowing for very rapid chains of transmission once the virus is circulating in communities.

14. The U.S. CDC estimates that the reproduction rate of the virus, the R0, is 2.4-3.8, meaning that each newly infected person is estimated to infect on average 3 additional persons. This is highly infectious and only the great influenza pandemic of 1918 (the Spanish Flu as it was then known) is thought to have higher infectivity. This again is likely a function of all human populations currently being highly susceptible. The attack rate given an exposure is also high, estimated at 20-30% depending on community conditions, but may be as high as 80% in some settings and populations. The incubation period is thought to be 2-14 days, which is why isolation is generally limited to 14 days.

15. There is currently no vaccine for COVID-19, and no cure. The only known ways to prevent the spread of SARS-nCoV-2 involve measures such as thorough handwashing, frequent

decontamination of surfaces, and maintaining six feet of physical distance between individuals (“social distancing”).

### **The risks of COVID-19 in detention facilities**

16. COVID-19 poses a serious risk to prisoners, workers, and anyone else in detention facilities. Detention facilities, including prisons like Elkton, have long been associated with high transmission probabilities for infectious diseases, including tuberculosis, multi-drug resistant tuberculosis, MRSA (methicillin resistant staph aureus), and viral hepatitis.

17. The severe epidemic of Tuberculosis in prisons in Central Asia and Eastern Europe was demonstrated to increase *community* rates of Tuberculosis in multiple states in that region, underscoring the risks prison outbreaks can lead to for the communities surrounding a prison.

18. Infections that are transmitted through droplets, like influenza and SARS-nCoV-2 virus, are particularly difficult to control in detention facilities, as social distancing and proper decontamination of surfaces is virtually impossible.

19. For example, several deaths were reported in the US in immigration detention facilities associated with ARDS following influenza A, including a 16-year old male immigrant child who died of untreated ARDS in custody in May 2019.

20. Current recommendations for social distancing, frequent hand washing, and frequent cleansing of surfaces to prevent infection and the spread of the virus are extremely difficult, if not impossible, to implement in the correctional setting. A number of features of these facilities can heighten risks for exposure, acquisition, transmission, and clinical complications of these infectious diseases. These include physical/mechanical risks such as overcrowding; population density in close confinement; insufficient ventilation; shared toilet,

shower, and eating environments; and limits on hygiene and personal protective equipment such as masks and gloves in some facilities. Shared spaces and equipment (such as telephones) are commonly not adequately disinfected, especially during the current pandemic when more frequent cleaning and disinfecting are required. Limits on soap (copays are common) and recommended hand sanitizers, since they contain alcohol, are also risks for spread. The nationwide shortage of personal protective equipment (PPE), as well as ancillary products (such as cleaning supplies and thermometer probes) further impacts the ability of correctional facilities to implement necessary precautions.<sup>1</sup>

21. The risk of exposure to and transmission of infectious diseases, as well as the risk of harm from developing severe complications or death if infected, is significantly higher in jails, prisons, and detention centers than in the community. Close, poorly ventilated, living quarters and often overcrowded conditions in these facilities foster the rapid transmission of infectious diseases, particularly those transmitted by airborne droplets through sneezing, speaking, or coughing. In these congregate settings, large numbers of people are closely confined and forced to share living spaces, bathrooms, eating areas, and other enclosed spaces. They are physically unable to practice social distancing, which the Centers for Disease Control and Prevention (“CDC”) has identified as the “cornerstone of reducing transmission of respiratory diseases such as COVID-19.”<sup>2</sup> Because of this, incarcerated individuals are less able to protect themselves from being exposed to and becoming infected with infectious diseases, such as COVID-19.

22. While jails, prisons, and detention centers are often thought of as closed environments, this is not the case. Custody, medical, and other support staff and contractors

<sup>1</sup> *Study of COVID-19 in Correctional Facilities*, Harvard University and National Commission on Correctional Health Care, April 9, 2020

<sup>2</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

enter and leave the facility throughout the day. New detainees arrive on a frequent basis. Since there is no effective way to screen for newly infected or asymptomatic individuals, they can unknowingly transmit COVID-19 to those housed in the facility. Detainees and inmates are often transferred between housing units, to other facilities, and to and from Court. This further increases the likelihood of transmission of COVID-19.

23. It has long been known that jails, prisons, and detention centers can be hotbeds of disease transmission. Due to the frequent ingress and egress of employees at these facilities, an outbreak within a jail, prison, or detention center can quickly spread to surrounding communities. For example, the tuberculosis epidemic that broke out in New York City in the early 1990s began in jails and was spread to the community by jail employees who became infected and then returned home to their families and communities.

24. In addition to the nature of the prison environment, prison and jail populations are also at additional risk due to high rates of chronic health conditions, substance use, mental health issues, and, particularly in prisons, aging and chronically ill populations who may be vulnerable to death or severe illnesses after infection from COVID-19 disease.

25. While every effort should be made to reduce exposure in detention facilities through internal mitigation efforts, this may be extremely difficult to achieve and sustain quickly enough. It is therefore an urgent priority in this time of national public health emergency to reduce the number of persons in detention as quickly as possible.

26. Given the experience in China as well as the literature on infectious diseases in jail, additional outbreaks of COVID-19 among the U.S. jail and prison populations are inevitable, as evidenced in Elkton. Releasing as many inmates as possible is important to protect the health of inmates, correctional facility staff, health care workers at jails and other detention

facilities, the community as a whole. Indeed, according to the World Health Organization, “enhanced consideration should be given to resorting to non-custodial measures at all stages of the administration of criminal justice, including at the pre-trial, trial and sentencing as well as post-sentencing stages.”<sup>3</sup>

27. For these reasons, the pandemic has prompted prisoner releases around the world. France has announced it will free 5,000 inmates<sup>4</sup>, and in the United States, California officials are planning to release up to thousands of prisoners.<sup>5</sup> In Britain, the Ministry of Justice is planning to grant thousands of prisoners early release within weeks in an effort to contain the spread of the virus in cells and facilities where it said social distancing rules are impossible to maintain.<sup>6</sup> Many cities and counties across the US, including San Francisco, Los Angeles, Chicago, Cleveland and New York, are also releasing prisoners to reduce the risk of COVID-19.<sup>7</sup>

28. It is difficult to overstate the devastation that a COVID-19 outbreak could inflict on a correctional facility such as FCI Elkton. At Rikers Island in New York, between April 1, 2020, and April 15, 2020, the number of COVID-19 positive incarcerated individuals and staff members grew by 104 and 114 people, respectively, upping the jail’s total numbers of confirmed cases to 288 among the incarcerated population, 488 among correction staff, and 78 among

<sup>3</sup> World Health Organization, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance (Mar. 15, 2020), [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0019/434026/Preparedness-prevention-and-control-of-COVID-in-prisons.pdf](http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-in-prisons.pdf).

<sup>4</sup> *Coronavirus: Low-risk prisoners set for early release*, BBC News (Apr. 4, 2020), <https://www.bbc.com/news/uk-52165919>.

<sup>5</sup> Paige St. John, *California to release 3,500 inmates early as coronavirus spreads inside prisons*, L.A. Times (Mar. 31, 2020), <https://www.latimes.com/california/story/2020-03-31/coronaviruscalifornia-release-3500-inmates-prisons>.

<sup>6</sup> *Britain plans to free many inmates early as it reports a on-day death toll*, New York Times, 4/3/20.

<sup>7</sup> Timothy Williams et al., ‘*Jails Are Petri Dishes’: Inmates Freed as the Virus Spreads Behind Bars*, N.Y. Times (Mar. 30, 2020), <https://www.nytimes.com/2020/03/30/us/coronavirusprisons-jails.html>.

health care workers.<sup>8,9</sup> The first known case of COVID-19 at Rikers was confirmed on Wednesday, March 18,<sup>10</sup> illustrating just how quickly this disease can and will overwhelm detention facilities. The Cook County jail in Chicago has emerged as the largest-known source of U.S. coronavirus infections, according to data compiled by The New York Times. At least 387 cases can be linked to the jail, including 272 inmates.

29. According to the Bureau of Prisons, three prisoners have died of COVID-19 at FCI Elkton and its adjacent low security satellite prison. Given the way the disease has progressed elsewhere, we can expect the death toll to mount rapidly.

30. From news reports, it is also my understanding that 43 detainees have been hospitalized outside the prison with COVID or suspected COVID, as have some staff members. Of those, 15 are on ventilators. Dozens more have symptoms. Even these dozens may represent the tip of the iceberg, since newly-infected people typically do not show symptoms for 2-14 days, and since the infection spreads rapidly to additional people.

31. It is my understanding that Elkton uses open bay / dorm housing units with multiple-occupancy cells, and a limited number of segregation units. It also my understanding that Elkton has roughly 2,400 detainees between the Elkton federal correction institution and the low security satellite prison on any given day; that staff that enter and leave the facility regularly; and that detainees share restroom and shower facilities and eat communally prepared food.

32. Based on these understandings, it is my opinion that the exponential infection of rate for COVID-19 we already see in the community would be magnified within Elkton.

<sup>8</sup> Julia Craven, *Coronavirus Cases Are Spreading Rapidly on Rikers Island*, Slate (Apr. 2, 2020), <https://slate.com/news-and-politics/2020/04/rikers-coronavirus-cases-increase.html>.

<sup>9</sup> Jan Ranson, *Jailed on a Minor Parole Violation, He Caught the Virus and Died*, N.Y. Times (Apr. 10, 2020)

<sup>10</sup> *As Testing Expands, Confirmed Cases of Coronavirus in N.Y.C. Near 2,000* (Mar. 18, 2020), N.Y. Times, <https://www.nytimes.com/2020/03/18/nyregion/coronavirus-new-york-update.html>.

Adequate social distancing would be impossible to maintain. What's more, the infection in Elkton would not stay limited to the facility, but would worsen infection rates in the broader community. The death rate will increase substantially before it starts to diminish without major interventions. This is why leaving implementation in the hands of local officials alone, who lack the expertise and resources and were incapable of preventing the outbreak in the first place or treating those who eventually died, is insufficient.

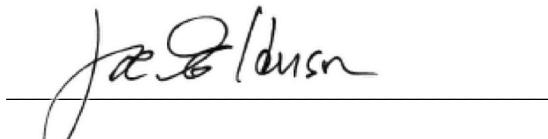
33. It is my public health recommendation that everyone who is medically-vulnerable to severe symptoms and death from COVID-19, as defined in this lawsuit,<sup>11</sup> be released from FCI Elkton and FCL Elkton immediately, taking precautions that they are released to a place where they can maintain medically appropriate isolation for at least 14 days and receive any necessary and available testing healthcare for underlying chronic conditions.

34. It is my public health recommendation that a public health expert be appointed to oversee operations related to preventing further spread of COVID-19 in Elkton, which may include authorizing further staggered release of detainees until it is possible to maintain consistent social distancing and appropriate hygiene within the facility.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

<sup>11</sup> “Persons held at Elkton over the age of 50 , as well as all current and future persons held at Elkton of any age who experience (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g. bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure and coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental disability; and/or (l) a current or recent (last two weeks) pregnancy.”

Executed this 11 day of April 2020 in Alameda County, CA

A handwritten signature in black ink, appearing to read "Joe Goldenson", is written over a horizontal line.

Joe Goldenson, MD

## References

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